

Appeal to the 'need to know' when requesting COVID info

Numerous MPA Legal Hotline calls recently have come from journalists writing stories relating to COVID-19 outbreaks in their communities. It has been a struggle to get access to data about the number of persons infected in certain locations, such as schools, and the degree to which the public is at risk. So here's a brief primer on state law relating to access to such data.

The State's Department of Health and Senior Services (or HSS) is charged with making and enforcing orders, findings, rules and regulations relating to the prevention of spread of contagious diseases, and also the determination of their prevalence in the state. That department has the power to control COVID-19 reporting and containment efforts. It also gives it the responsibility to compile and issue reports of "benefit" and "advantage" to the public in dealing with such viruses.

Because of this charge, HSS is given the right to obtain patient infection data. However, state law says the department "shall maintain the confidentiality of all medical records and information abstracted by or reported to" the department and it "may" be released only in a statistical aggregate form that ensures no patient identification data is released. HSS also is given access to all data and information on infection control practices and treatments in all medical treatment facilities in the state.

Going on, state law charges county health offices with the obligation of enforcement of the rules and regulations of HSS, and those rules/regulations supersede any local orders, rules or regulations. (There is an exception to this statute for cities of 75,000 and greater, who have their own authority over their jurisdiction.)

Meanwhile, health care providers are charged only with reporting only abstract patient data to HSS. The data itself is not public but all reports and studies based on that data issued by HSS are public. Specifically, HSS may not release any data that would identify a patient in making these reports.

Much of this material comes from chapter 192 of the Missouri Statutes. Additionally, there are provisions in chapter 191 relating to the right of emergency care providers (and "Good Samaritans") to access personal information from victims in cases where they are involved, for the personal safety of those individuals.

So, given that HSS has rule-making authority, the next step is the Missouri Code of State Regulations. Regulation 19 CSR 20-20.020 subsection 1 requires that information on COVID-19 infections be reported "immediately" by "rapid communication" to HSS or local health authorities.

Then, Regulation 19 CSR 20-20.040 contains provisions relating to determining the prevalence and of the spread of infectious, contagious, communicable or dangerous diseases. Subsection 2 requires local authorities or their designees, upon receiving a report of such a disease, to gather necessary data, and then to "establish and maintain quarantine..." and to "(e)stablish appropriate control measures, which may include isolation, quarantine, disinfection, immunization, closure of establishment, notification to potentially exposed individuals to make them aware of the risk or potential risk of the disease and such information required to avoid or appropriately respond to the exposure notification to the public of the risk or potential risk of the disease and such information

required to avoid or appropriately respond to the exposure, the creation and enforcement of adequate orders to prevent the spread of the disease and other measures considered by the department and/or local health authority as appropriate...." (This language is from that regulation beginning in subsections 2E and 2G.)

Then, the department in subsection 3B further instructs local county or city health officials. "The local health authority shall use every reasonable means to determine the presence of a communicable disease or the source of any disease..." and, further, "to do the following: (A) Notify or ensure adequate notice is given to potentially exposed individuals when such official determines that a case or outbreak of any such disease subjects such individuals to serious illness or death.... and (B) Notify or ensure adequate notice is given to the public when such official determines that a case or outbreak of any such disease subjects the public to serious illness or death... and the identity of potentially exposed individuals is not known at such time or cannot be known. Such notice shall provide necessary information for the recipient to avoid or appropriately respond to the exposure."

While there are no magic answers to the questions reporters are having, these last few regulations give reporters some ammunition to argue that there is perhaps a stronger "need to know" than is being satisfied by the information being released to the public. Now you know where the rule is that you need to cite.

